



POLICE DEPARTMENT

April 23, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Margarita Olivo  
Tax Registry No. 941289  
107 Precinct  
Disciplinary Case No. 2010 3164

The above named member of the Department appeared before me on February 2, 2012, charged with the following:

1. Police Officer Margarita Olivo, assigned to the 107th Precinct, on or about and between December 6, 2009, and December 9, 2009, conducted unauthorized inquiries using Department computers for personal purposes and unrelated to any official Department purpose. *(As amended)*

P.G. 219-14, Page 1, Paragraph 2 DEPARTMENT COMPUTER SYSTEMS

2. Police Officer Margarita Olivo, assigned to the 107th Precinct, on or about February 13, 2010, conducted an unauthorized inquiry using Department computers for personal purposes and unrelated to any official Department purpose.

P.G. 219-14, Page 1, Paragraph 2 – DEPARTMENT COMPUTER SYSTEMS

3. Police Officer Margarita Olivo, assigned to the 107th Precinct, on or about June 22, 2010, impeded a Department investigation in that, during her official Department interview pursuant to PG 206-13, provided false or misleading statements when questioned about her unauthorized use of Department computers.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Joanne Watters, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through her counsel, entered a plea of Guilty and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

### DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

### SUMMARY OF EVIDENCE IN MITIGATION

Respondent, who has been a member of the Department for five years and is assigned to the 107 Precinct, testified that her work status is full duty and that she has never been placed on modified assignment.

With regard to Specification No. 1, Respondent admitted that between December 6 and December 9, 2009, she was assigned as the assistant desk officer and that while she was performing computer inquiries for official Department purposes, she initiated computer inquiries for a personal purpose in that she accessed the Department of Motor Vehicles (DMV) database through her Department computer and entered the name

**Person A** (**Person A**) Respondent explained that she did this only because she was concerned about the welfare of her friend and fellow Police Officer Lisa Rodriguez (Rodriguez). Respondent has known Rodriguez since childhood and Respondent lived with Rodriguez' family when she was in the Police Academy.

Respondent testified that Rodriguez' sister-in-law **Person B** had contacted her and told her that Rodriguez was dating **Person A** (**Person A**) and that **Person A** was a "bad guy" who **Person B** believed was abusing Rodriguez. Respondent recalled that what **Person B**

told her about Person A "sounded pretty serious" and that she became "concerned" about the welfare of her friend Rodriguez. Respondent explained that she "ran" Person A name in the DMV database because she wanted to know Person A address in case he hurt Rodriguez.

Respondent testified that Person B was hoping to "find something on" Person A so she could confront Rodriguez with this information but Respondent was never able to find any criminal record regarding Person A. Respondent did not dispute that she may have "run" Person A name as many as nine times using her personal code. Respondent explained that when a name is entered into the DMV database sometimes the request does not "go through." As a result, she may have entered Person A name several times because she "rebooted" when "it didn't go through."

Respondent recalled that the only information she found out about Person A was his address. Respondent does not know Person A and has never met him. Respondent recalled that when she was living with Rodriguez and her family, Rodriguez had more than one boyfriend who would come by the house to pick her up. Respondent was never introduced to a male named "Person A" by Rodriguez during the time she was living with her. Respondent testified that Rodriguez later assured her that Person A posed no danger to her.

With regard to Specification No. 2, Respondent admitted that she performed a computer inquiry for a personal purpose unrelated to any official Department purpose in that, on February 13, 2010, she conducted a single warrant check on behalf of Rodriguez. Respondent explained that Rodriguez had called her and told her that she had been rejected as a prospective tenant regarding an apartment she was attempting to lease.

Rodriguez told her that the landlord had rejected her because he claimed that she "had a warrant." Respondent recalled that she told Rodriguez that it was impossible that she had a warrant "because cops do not have warrants." Respondent "ran" Rodriguez's name, confirmed that Rodriguez did not have any warrants under her name, and informed Rodriguez that the warrant check was negative.

With regard to conducting this warrant check for Rodriguez, Respondent stated that, in hindsight, "I should have told her to speak to her ICO (Integrity Control Officer). I should have told her to ask someone in your precinct to run it for you" or to "speak to a supervisor... I should have never done it."

With regard to Specification No. 3, Respondent admitted that she impeded a Department investigation in that during her first official Department interview, which was conducted on June 22, 2010 [Department's Exhibit (DX) 1], she made misleading statements when she was questioned about her unauthorized use of Department computers.

During that first official Department interview, Respondent was informed by her interrogators that she was being investigated for criminal association with Person A (DX 1 page 2) who, she testified, she does not know. Respondent explained at the time of the official Department interview that she could not recall conducting a warrant check for Rodriguez. With respect to the inaccurate answers Respondent provided at her first official Department interview, she explained:

When they first told me I was criminally associated to a Person A I knew for a fact...I don't know a Person A Person A like what are you talking about? I should have...listened better, I should have said...let me think about this, give me a moment. I should have done that and I didn't do it. You know, I should have. I was wrong.

Respondent testified that during this official Department interview, she was never shown a picture of Person A and, although it was possible that she could have seen him at Rodriguez's house, she was never introduced to him. Respondent testified that she does not believe she ever met Person A. Respondent stated that Rodriguez never asked her to run anything regarding Person A and investigators never mentioned if she ran information for Person B during the official Department interview, which would have probably helped her recollection at the time had she known.

A second official Department interview was conducted with regard to running Rodriguez's name. Respondent said while prepping for the interview with her lawyer, she was able to recall "the first incident" (the Person A DMV inquiries). Respondent explained, "I recalled the first incident and before we even had the second interview I spoke to the attorney and I asked her if it was possible for me to clarify the first incident and she said that she would let them know that I wanted to clarify the first incident." Respondent remembered running Person A name for Person B because she was worried that Rodriguez was possibly a victim of domestic violence. Respondent's attorney conveyed that information to the investigators and was told they would conduct an official Department interview with regard to that on another day. The second official Department interview only involved questions about her warrant check computer inquiry on Rodriguez. A third official Department interview was conducted at which Respondent told the investigators about the computer inquiry on Person A requested by Person B.

With regard to the answers she provided at her first official Department interview, Respondent explained, "I should have took more time to think about what the questions

were, I should have given them the right information but I didn't recall it at the time and I should have sat there and I should have given them the right information...I was wrong."

On cross-examination, Respondent acknowledged that because she gave inaccurate information regarding the computer checks during her first official Department interview, investigators were required to take further steps in their investigation. Respondent agreed that she found out she was the subject of an investigation a few days before her first official Department interview and that she had a conversation with her union delegate prior to the interview. Respondent admitted that she gave inaccurate answers to the investigators when she denied that she had heard Person A name or had performed any computer inquiries on Person A name.

Respondent denied that she knew who the father of Rodriguez's second child was. Person B only told Respondent that Person A was a "bad guy" and that she believed that Rodriguez was being abused by him. Person B told her that Person A was known as Person A. Person B informed Respondent that Rodriguez was dating Person A but she did not know that Rodriguez was pregnant and that Person A was the father.

Respondent agreed that she ran Person A name for Person B because, based on what Person B had told her, she thought Rodriguez was being abused. Respondent confirmed that she did not report what Person B had told her to anyone. Respondent confirmed that she performed the Person A DMV inquiries because she "wanted to know where this guy lived...because I don't know who this person is" and "in case something happens to her, he kills her or something...at least there is an address on hand." Respondent did not ask any members of Rodriguez' family about Person A. When

Respondent confronted Rodriguez with Person B abuse allegation, Rodriguez told her that no one had abused her and that it was a false accusation.

After her first official Department interview, Respondent did not reach out to the investigators to clarify the inaccurate information she provided during the interview. Her second official Department interview was conducted ten months after the first interview. Respondent testified that, after speaking to her attorney, she wanted to clarify some things she said during the first official Department interview. The attorney spoke with investigators prior to the second interview about Respondent's desire to clarify what she said during the first interview. Respondent was informed that she would be called back for a third interview to correct anything statements she made during the first official Department interview. The second official Department interview only concerned the computer inquiry Respondent conducted on Rodriguez. Respondent denied knowing that Rodriguez had been officially interviewed by Department investigators and that Rodriguez had informed them that the Respondent knew who Person A was.

#### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

Respondent was appointed to the Department on July 10, 2006. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded Guilty and admitted that she conducted DMV inquiries on [Person A] and one warrant check on Rodriguez for personal purposes unrelated to any official Department purpose. The Assistant Department Advocate (the Advocate) did not dispute Respondent's assertion that her reason for conducting the DMV inquiries on [Person A] name was because she was concerned about Rodriguez' welfare, and that her reason for conducting the single warrant check on Rodriguez' name was because she wanted to end Rodriguez' concern that she had an outstanding warrant. Thus, Respondent's computer inquiries, while improper, were altruistically motivated in that she was trying to help a fellow officer. Respondent neither sought nor obtained any personal benefit for conducting these computer checks. In her summation, the Advocate characterized Respondent's misconduct of conducting these inquiries as being relatively "*de minimus* in nature." Nonetheless, the Advocate recommended that Respondent be penalized not only by forfeiting 30 vacation days but also by being placed on dismissal probation.

The Advocate based her recommendation on Respondent's plea of Guilty to Specification No. 3 in which Respondent admitted that at her first official Department interview she impeded a Department investigation when she provided "false or misleading" answers to questions posed to her about her unauthorized computer inquiries.

When Respondent was asked at this interview whether she had performed any computer searches for any member who was not assigned to the 107 Precinct, she responded, "No." (DX 1 page 10) Since this interview was conducted on June 22, 2010, just over four months after Respondent had conducted the warrant check on Rodriguez'

name, Respondent should have been able to recall the computer search she performed for Rodriguez.

Similarly, although Respondent's first official Department interview was conducted over six months after she initiated DMV inquiries on Person A, Respondent admitted that she ran Person A's name to obtain his address because she and Rodriguez' sister in-law Person B wanted to know where he lived in case Person A did something to Rodriguez or even "killed" her. Her concern for her friend, coupled with the fact that Respondent had to enter Person A's name as many as nine times over a four-day period because she had difficulties accessing the DMV database, made these DMV inquiries a memorable event.

Since Respondent should have been able to recall these DMV searches that she performed at Person B's request, her "I don't recall" response to the question of whether she had performed a computer inquiry on December 6, 2009 on the name Person A, her "I don't remember" response to the question of whether she recalled the name Person A (DX 1 page 11); her "no" response to the question of whether she had performed computer searches for anyone who was not employed by the Department; and her "no, I can't" response to the question of whether she could remember having "ever heard" Person A's name or whether she could recall that anyone had ever "mentioned" his name to her (DX 1 page 16), were all inaccurate and misleading.

However, I find that Respondent's misconduct is partially mitigated by several factors. I would note that her interviewer did not initially alert her that the subject matter of the interview was that she had made unauthorized computer inquiries on Person A's name and on Rodriguez' name. Rather, her interviewer told her that the interview concerned

“an incident that occurred on December 6, 2009” and that “the allegation is criminal association.” (DX 1 page 2) Thus, this statement by her interviewer did not alert Respondent, or her attorney, that the interview involved her misuse of Department computers. Rather, it confused her by misleadingly informing Respondent that she was being investigated for being involved a personal relationship with someone who was, or had, engaged in criminal activities.

Also, since the Advocate did not refute Respondent’s assertion that she had no recollection of ever having met, much less associated with, Person A Respondent’s “no” response to the question “so you don’t know Person A (DX 1 page 18) was not provably false.

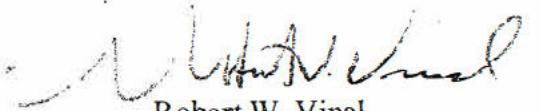
With regard to the false and misleading answers that she provided at her first official Department interview regarding her unauthorized computer inquiries, Respondent volunteered that, “I should have...listened better, I should have said...let me think about this, give me a moment. I should have done that and I didn’t do it...I should have. I was wrong.” I credit Respondent’s pledge that she will never again impede a Department investigation by providing misleading answers to questions posed by Department interviewers.

Finally, in fashioning an appropriate penalty regarding an impeding charge it is relevant to consider to what extent the investigation was impeded. Here, the record indicates that the only further investigative steps that were taken were to interview Rodriguez and to conduct additional interviews of Respondent. Since the Department has not charged Respondent with making any false or misleading statements at her

second official Department interview or at her third official Department interview, I can only conclude that Respondent provided truthful answers at these two interviews.

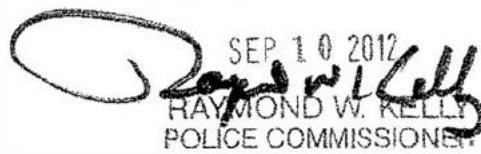
It is recommended that Respondent forfeit 30 vacation days.

Respectfully submitted,



Robert W. Vinal  
Assistant Deputy Commissioner - Trials

APPROVED



SEP 10 2012  
RAYMOND W. KELLY  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER MARGARITA OLIVO  
TAX REGISTRY NO. 941289  
DISCIPLINARY CASE NO. 2010-3164

The Respondent received an overall rating of 3.5 on her 2011 performance evaluation, 4.0 on her 2010 evaluation, and 3.0 on her 2009 evaluation. She has no medals. [REDACTED] She has no prior formal disciplinary record and no monitoring records.

For your consideration.



Robert W. Vinal  
Assistant Deputy Commissioner Trials